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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER DIRECTING A PROVIDER)
OF ELECTRONIC COMMUNICATION)
SERVICE TO DISCLOSE RECORDS TO THE)
GOVERNMENT)

CRIMINAL DOCKET NO. 07-524M

**DECLARATION OF JENNIFER S.
GRANICK IN SUPPORT OF
APPLICATION ON BEHALF OF AMICI
ELECTRONIC FRONTIER
FOUNDATION AND PROFESSOR
SUSAN FREIWALD FOR EXTENSION
OF TIME TO FILE *AMICI* BRIEFING**

Judge Terrence F. McVerry

DECLARATION OF JENNIFER S. GRANICK, ESQ:

I am an attorney licensed to practice law in the State of California and in the Ninth Circuit Court of Appeals. I am Civil Liberties Director at *amicus curiae* Electronic Frontier Foundation (EFF). I am one of the attorneys assigned to write the EFF amicus brief in this matter. Other EFF attorneys knowledgeable about the law as it relates to cell phone tracking and working on drafting the brief in this matter are Lee Tien, Kevin Bankston and Matt Zimmerman (EFF team).

On May 7, 2008, I met with the EFF team and *amicus* Professor Susan Freiwald to coordinate

our approach to the briefing requested by this Court, in an effort to avoid duplication and to provide a comprehensive response to this Court's request.

Coordination between EFF, Professor Friewald and with other *amici* will be time consuming. At the meeting, the EFF team and Professor Friewald discussed the logistics of sharing drafts of our briefs with each other. We also discussed the logistics of ensuring that other interested organizations and parties would have an opportunity to review, contribute to, and sign on to our briefs. The EFF team is coordinating with the Center for Democracy and Technology, the Electronic Privacy Information Center and the American Civil Liberties Union for Pennsylvania, among others. Professor Friewald is coordinating with a number of other cyberlaw and privacy law professors at law schools across the country. We believe that giving interested organizations and parties a meaningful opportunity to review our briefs, give feedback and decide whether to sign will require a week or more after a final draft is completed.

On May 12, 2008, I spoke with Federal Defender Lisa Freeland who has also been appointment *amicus* by this Court. During that call both parties indicated a desire to exchange drafts with each other. I told Ms. Freeland that we intended to ask this Court to set a new filing date and Ms. Freeland indicated her support for our request.

In addition to needing time to coordinate, previously scheduled deadlines and travel limit the EFF team's ability to work on this brief between now and June 2. Attorneys Tien and Granick are working with defense counsel to help coordinate *amicus* support for a petition for rehearing in *United States v. Arnold*, Case No. 06-50581, an April 21, 2008 Ninth Circuit panel opinion allowing border searches of laptop computers without reasonable suspicion. The petition in *Arnold* is due June 2 and *amicus* briefs are due June 12.

Attorney Bankston currently expects to be in Washington, D.C., May 19-24, for EFF's lobbying effort against legislation adverse to its clients in another EFF case, *Hepting v. AT&T*, Docket No. C-06-672 VRW (N.D.Ca.), and to the plaintiffs in related multi-district litigation that is co-coordinated by EFF, MDL Docket No 06-1791 VRW (N.D.Ca.). House Majority Leader Steny Hoyer--whom Speaker Pelosi has appointed to lead the negotiations with the Senate and the White House on the issue of immunity for phone companies like AT&T that are alleged by plaintiffs such as Hepting to have

assisted in the NSA's warrantless wiretapping program--has repeatedly stated that the bipartisan goal of the negotiation process is to reach an agreement prior to Congress' Memorial Day recess. From now until then, EFF's lobbying effort is likely to consume much of Mr. Bankston's time, and he is tentatively scheduled to be in DC for the week before the recess when a bill is most likely to be introduced.

Additionally, both Mr. Bankston and Ms. Granick are scheduled to speak on electronic surveillance issues at the National Seminar for Federal Defenders in New Orleans, Louisiana on May 28-29.

Attorney Zimmerman has planned a two week vacation, currently scheduled from June 7 to June 22.

These vacation dates, case deadlines and work-related travel plans make it impossible for the EFF team to write the brief and share it with other *amici* sufficiently in advance of the June 2 date. This is particularly so because Professor Freiwald is unavailable the weekend before the current due date. She will be in Newport, Rhode Island May 29th to June 1st officiating at a wedding and attending all the related events.

The EFF team and Professor Freiwald believe that an additional thirty (30) days will resolve these problems.

DATED: May 15, 2008

Respectfully submitted,

By /s/
Jennifer Stisa Granick, Esq.